

Hon. David G. Estudillo
Trial Date: May 13, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LISA C. NEAL, an individual,

Plaintiff,

VS.

CITY OF BAINBRIDGE ISLAND, a Washington State municipal corporation,

Defendant.

NO.: 3:20-cv-06025-DGE

**JOINT DISCOVERY DISPUTE
STATEMENT RE FRCP 30(b)(6)
DEPOSITION**

Court Conference: TBD

JOINT STATEMENT REGARDING
DISCOVERY DISPUTE - 1
(Cause No. 3:20-cv-06025-DGE)

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1. **Instructions Not to Answer**

2 **Plaintiff's Position: Facts:** Defendant's 30(b)(6) witness, Christine Brown, was instructed
 3 not to answer at least 158 questions based on Defendant's counsel's characterizations: (1)
 4 questions calling for a "legal conclusion," (2) questions "outside the scope of the topics of the
 5 Notice," including topics in both the Second and Third Amended Notices, (3) questions
 6 requiring knowledge outside the "written record," (4) questions asking the witness to
 7 "interpret" a written record, (5) questions already asked and answered, (6) questions regarding
 8 facts known to the Defendant that were gathered by Defendant's lawyers, (7) all questions
 9 regarding documents produced in response to Public Records Act requests, (8) all questions
 10 deemed related to the witness's "personal" knowledge, including her concurrent roles as City
 11 Clerk and Public Records Officer, or her prior role as a paralegal within the City legal
 12 department, and (9) questions regarding Ms. Brown's three declarations submitted in this case.

13 **Law:** These instructions not to answer were improper. Fed. R. Civ. P. 30(c)(2) (instructions
 14 not to answer allowed only to preserve a privilege or enforce a court-ordered limitation); *La*
 15 *Jolla Spa MD, Inc. v. Avidas Pharm., LLC*, 17-CV-1124-MMA(WVG), 2019 WL 4141237, at
 16 *7 (S.D. Cal. Aug. 30, 2019) (obstructionist objections sanctioned); *Batts v. Cnty. of Santa*
 17 *Clara*, C 08-00286 JW, 2010 WL 545847, at *2 (N.D. Cal. Feb. 11, 2010) (instructions not to
 18 answer were "clearly improper"); *La Jolla Spa*, 2019 WL 4141237, at *7 (Notice is minimum,
 19 not maximum, and objections to off-topic questions were "baseless;" obstruction of deposition
 20 improper); *ChriMar Systems, Inc. v. Cisco Systems, Inc.*, 312 F.R.D. 560, 563 (N.D. Cal.
 21 2016); *Campbell v. Facebook Inc.*, 310 F.R.D. 439, 450 (N.D. Cal. 2015); *Batts*, 2010 WL
 22 545847, at *2. The Court has entered no order protecting Defendant from its obligations
 23 under FRCP 30(b)(6), or limiting the scope of any 30(b)(6) deposition.

24 **Defendant's Position:** An April 1, 2023 Court Order permitted Plaintiff to conduct a
 25 deposition after the discovery cutoff based on Plaintiff's Second Amended Rule 30(b)(6)
 26 deposition notice (Dkt. 71-1), directing that "*the court will not hear any motions related to the*

1 topics identified in the prior Rule 30(b)(6) notice.” Dkt. 117 at 8-9.¹ After confirming an
 2 August deposition date (Dkts. 136, 137), Plaintiff served a Third 30(b)(6) Notice adding new
 3 topics and re-noting it to December 1, 2023. Dkt. 158-2 at 14-19. Plaintiff repeatedly asked
 4 questions on *new* topics but the City could not seek a Protective Order due to the Court’s
 Order not to file further motions. Dkt. 158, 157.

5 Plaintiff repeatedly 1) sought legal opinions. *Mitchell v. Atkins*, No. 2019 WL
 6 6251044, at *1–2 (W.D. Wash. Nov. 22, 2019)(30(b)(6) questions seeking legal opinions from
 7 lay persons are improper);² 2) sought “City” testimony about the deliberative process of
 8 individually-elected local legislators. *See, Mi Familia Vota v. Fontes*, 2023 WL 8183557, at
 9 *3 (D. Ariz. Sept. 14, 2023) (30(b)(6)(deposition seeking objectives, motives, and information
 10 considered by legislators and individual legislators’ communications is “unworkable in terms
 11 of preparing and identifying a single witness who can present binding testimony on behalf of
 12 the” Arizona Legislature); Dkt. 170 at 5-10(cases cited); and 3) sought testimony not “known
 13 or reasonably available ‘to the entity.’”

14 Repeated requests for a City representative to “interpret” communications among
 15 individual citizens, volunteers, elected officials (that Plaintiff chose not to depose or
 16 interview) simply because copies of emails appear somewhere in a City’s database, to
 17 memorize more than 35,000 pages of documents produced, are improper. This case does not
 18 involve singular “decision-maker” as cases cited by Plaintiff do. The documents are publicly
 19 available and in Plaintiff’s possession. Dkt. 76 at 7-8 (cases cited).

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 24 ¹ The City objects to Plaintiff submitting this “discovery dispute” in violation of this Order.
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 26 ² Asking witness to interpret municipal/state/federal law, legal objections, “public figure” for affirmative defense.

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2. **Inadequate Witness Preparation**

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Plaintiff's Position: Facts: As regards questions the witness was allowed to answer, COBI's
designated witness performed no investigation regarding the topics, talked to no witnesses,
could not identify the documents she allegedly reviewed in preparation, could not recall any
searches she allegedly conducted for documents, could not testify regarding specific
documents she recollects that included information responsive to topics, would not provide
the notes she alleged she had created to prepare for the deposition, would not review emails
that would allow her to answer questions, and had no knowledge as to whether the documents
she reviewed had been produced.

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Law: The witness(es) offered must be prepared so as to have the knowledge necessary to
11 answer the questions, whether from documents, past employees, or other sources. *Johnson v.*
12 City of San Jose, 21CV01849BLFVKD, 2023 WL 3687968, at *1 (N.D. Cal. May 25, 2023);
13 Rodriguez v. Gov't of Guam, CIV. 09-00025, 2010 WL 2465150, at *2 (D. Guam June 14,
14 2010). No court has immunized governments from the obligations under Fed. R. Civ. P.
15 30(b)(6). *See, e.g. Johnson*, 2023 WL 3687968, at *1; *Rodriguez* 2010 WL 2465150, at * 2.

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Defendant's Position: The 30(b)(6) representative only has an obligation to answer to
17 "matters known or reasonably available" to the entity)). *Boyer v. Reed Smith, LLP*, C12-
18 5815 RJB, 2013 WL 5724046, at *3 (W.D. Wash. Oct. 21, 2013). Inquiries of knowledge,
19 thought processes, and interpretation of communications among a variety of individuals are
20 not matters known to the City.³ Ms. Brown did testify to where information could be found in
21 the public record and that "the councilmembers are the decision-makers." Dkt. 117 at 5; Dkt.
22 111 at 5); Dkt. 170 at 5-11(and cases cited) (appropriate witness to "respond or at least
23 identify where the requested information could be found" "based on the City's public
24 records"); Dkt. 70, 76, 111.

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26³ Asking "why" the City Council voted to removed Neal and if she contacted Councilmembers to find out *why*
they may have voted.

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2 DATED: January 8, 2024

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4 NEAL FIRM, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2024, I electronically filed the foregoing with the Clerk of the Court using the EM/ECF system, which will send notification of such filing to the following:

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DATED: January 8, 2024

/s/ Christopher L. Neal
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